

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

OATLY AB

Stora Varvsgatan 6a
SE-211 19
Malmö, Sweden

and

OATLY, INC.

175 Varick Street
New York, New York 10014,

Plaintiffs,

vs.

D'S NATURALS LLC

6125 East Kemper Road
Cincinnati, Ohio 45241

6315 East Kemper Road
Cincinnati, Ohio 45241

Defendant.

Plaintiffs Oatly AB and Oatly, Inc. ("Oatly") state for their Complaint against Defendant, D's Naturals LLC ("D's Naturals"), as follows:

NATURE OF THE CLAIMS

1. This is an action for trademark infringement under the Trademark Act of 1946 (the "Lanham Act"), as amended, 15 U.S.C. § 1114; unfair competition pursuant to 15 U.S.C. § 1125(a); deceptive trade practices under Ohio Revised Code § 4165.01 et seq.; trademark infringement under the common law of the State of Ohio; and unfair competition under the common law of the State of Ohio, and cancellation of a registered trademark.

PARTIES, VENUE AND JURISDICTION

2. Plaintiff Oatly AB is a Swedish company, with a principal business address located at Stora Varvsgatan 6a, SE-211 19, Malmö, Sweden. For over 25 years, Oatly AB has produced and distributed various oat-based and milk substitute products around the world, including the full line of OATLY and WOW NO COW! branded goods, such as oat milks, oat yoghurts, and other oat-based foodstuffs, oat creams, oat-based beverages, and other highly nutritious food and drink products.

3. Plaintiff Oatly, Inc. is an American division of Oatly AB, with a principal business address located at 175 Varick Street, New York, New York 10014. Oatly, Inc. facilitates the distribution of Oatly products within the United States of America.

4. Upon information and belief, Defendant D's Naturals LLC is a Limited Liability Company with a principal business address located at 6125 East Kemper Road, Cincinnati, Ohio 45241 and/or 6315 East Kemper Road, Cincinnati, Ohio 45241. Upon information and belief, D's Naturals offers dairy free drink powders, nutritional supplements, nut butters, cookies, brownies, cereal bars, and sports beverages.

5. This Court has jurisdiction over this litigation because the action arises under 15 U.S.C. §§ 1051-1141 of the Lanham Act, and jurisdiction is proper in accordance with 15 U.S.C. § 1121 and 28 U.S.C. §§ 1338(a) and (b). Additionally, this Court has pendant, ancillary and/or supplemental jurisdiction over the state law claims asserted in this litigation pursuant to 28 U.S.C. § 1337.

6. This Court has personal jurisdiction over D's Naturals because D's Naturals' principal place of business is located in Hamilton County, Ohio, D's Naturals' products can be and have been sold in Ohio, and the effects of D's Naturals' unlawful conduct are felt in Ohio,

7. Furthermore, venue is appropriate in this Court in accordance with 28 U.S.C. § 1391(b) as a result of D's Naturals maintaining its principal place of business in Hamilton County, Ohio.

8. The amount in controversy exceeds Seventy Five Thousand Dollars and 00/100 (\$75,000.00).

FACTUAL BACKGROUND

Oatly and the Famous OATLY Brand and Trademark

9. In the early 1990s, Oatly's founder invented a now patented process of making liquid oats while working as a researcher at Lund University, in Lund, Sweden.

10. Subsequently, Oatly began producing various oat-based products, including its renowned oat-milk.

11. Oatly ultimately began offering a highly popular brand of oat-milk under the WOW NO COW! trademark.

12. On May 9, 2014, Oatly filed a European Union trademark application for WOW NO COW!, and received a registration on September 18, 2014.

13. Subsequently, Oatly filed an international trademark application for WOW NO COW! under the Madrid protocol. The international trademark application received a priority date of May 9, 2014 under Article 4 of the Paris Convention.

14. Oatly designated the United States, among other countries, for an extension of protection under its international trademark application for WOW NO COW! as of November 7, 2014.

15. On September 20, 2016, the United States Patent and Trademark Office (“USPTO”) issued U.S. Registration No. 5,043,246 for Oatly's WOW NO COW! trademark

under Section 66(a) of the Lanham Act, also with a priority date of May 9, 2014 under Article 4 of the Paris Convention (“Oatly’s Registration”). A copy of the certificate of registration for Oatly’s Registration is attached hereto as **Exhibit A**.

16. Oatly’s Registration includes among its identified goods: (i) oat milk; milk substitute; milk substitutes containing oats, cream substitutes containing oats, sour milk substitutes containing oats, yoghurt substitutes containing oats; (ii) flour, oatmeal, rolled oats; oat-based foodstuffs, namely, processed oats, oatmeal; muesli; bread; biscuits; pastry; confectionery containing oats, namely, oat cakes; oat-based biscuit mixes, pancakes, waffles, pre-mixed liquid pancake batter, oat-based gruel, oat-based sauces, oat-based vanilla custard, ice-cream, oat-based ice-cream, flavored ice-cream, fruit ice-cream; and (iii) non-alcoholic beverages, namely, oat-based beverages, fruit and berry beverages based on oats.

17. Since filing its trademark applications for WOW NO COW!, Oatly has begun use of its popular WOW NO COW! trademark in the United States. In connection therewith, Oatly has sold WOW NO COW! oat-based products included in the identification of goods for Oatly’s Registration to numerous American cafés, coffee shops, restaurants, and other commercial locations where beverages are served, where such WOW NO COW! oat-based products are offered and provided to the American public.

18. Likewise, Oatly has attended numerous trade shows and events throughout the United States offering its WOW NO COW! oat-based products, as identified in Oatly’s Registration, to consumers of such products. For example, Oatly has shown its WOW NO COW! products at the Natural Products Expo East 2017, held at the Baltimore Convention Center in Baltimore, Maryland from September 14-16, 2017, the New York City Coffee Festival, held September 16-18 at the 69th Regiment Armory in Manhattan, and Stockholm, CA, a Swedish

music festival in Los Angeles, California on October 15, 2016. Images from these events are attached hereto as **Exhibit B**.

19. Oatly's presence in the United States has increased as the company continues to offer its products to U.S. consumers, to the extent that Oatly established an American division of the company, known as Oatly, Inc., on January 20, 2016.

20. Oatly continues to offer and sell WOW NO COW! oat-based products to American consumers, and American consumers have come to recognize Oatly as the source for such products under the WOW NO COW! mark.

21. Goods sold under the WOW NO COW! trademark have been referenced or featured in non-solicited articles covering the non-dairy food and beverage industry.

D's Naturals' Infringement of the WOW NO COW! Mark

22. Upon information and belief, D's Naturals is a company offering health-related products and nutritional supplements, including cereal bars, lactose-free powdered drink supplements, nut-butters, cookies, and sports beverages, among others to American consumers.

23. At some point after the priority date of May 9, 2014 assigned to Oatly's Registration, D's Naturals began offering dairy free and soy free cereal bars under the trademark "NO COW."

24. On October 31, 2014, D's Naturals filed a USPTO trademark application for NO COW asserting a first date of use as July 1, 2014. The October 31, 2014 application matured into U.S. Reg. No. 4,839,835 on October 27, 2015, in connection with goods identified as: fruit-based meal replacement bars; nut-based snack bars; vegetable-based raw food bars; and vegetable-based snack foods.

25. On May 31, 2017, D's Naturals filed an “intent to use” USPTO trademark application for NO COW, Serial No. 87/470,210, in connection with goods identified as: (i) powdered nutritional supplement drink mix containing protein; soy protein for use as a nutritional supplement in various powdered and ready-to-drink beverages; (ii) nut-butters; powdered nut-butters; single serving nut-butters; (iii) cookies, brownies, cereal bars, high-protein cereal bars; and ready to eat, cereal derived food bars; and (iv) protein-enriched sports beverages.

26. On August 30, 2017, the USPTO refused registration of D's Naturals' NO COW trademark application, after concluding that there was a likelihood of confusion between D's Naturals' NO COW trademark application and Oatly's Registration.

27. On October 17, 2017, D's Naturals filed an “intent to use” USPTO trademark application for NO COW & Design, Serial No. 87/648,771, in connection with goods identified as: (i) powdered nutritional supplement drink mix containing protein; soy protein for use as a nutritional supplement in various powdered and ready-to-drink beverages; dietary supplements, namely, protein-based, nutrient-dense snack bars (ii) fruit-based meal replacement bars; nut-based snack bars; vegetable-based raw food bars; vegetable-based snack foods; nut-butters; powdered nut-butters; single serving nut-butters; (iii) high protein cookies, high protein brownies, high-protein cereal bars; ready to eat, high protein cereal derived food bars; and (iv) protein-enriched sports beverages.

28. On October 17, 2017, D's Naturals filed an “intent to use” USPTO trademark application for NO COW. NO BULL. NO WHEY!, Serial No. 87/648,816, in connection with goods identified as: (i) high protein cookies, high protein brownies, high-protein cereal bars; ready to eat, high protein cereal derived food bars; and (ii) protein-enriched sports beverages.

29. On October 17, 2017, D's Naturals filed a USPTO trademark application for NO COW. NO BULL. NO WHEY!, Serial No. 87/648,844, asserting a first date of use as October 6, 2015, in connection with goods identified as: (i) powdered nutritional supplement drink mix containing protein; soy protein for use as a nutritional supplement in various powdered and ready-to-drink beverages; dietary supplements, namely, protein-based, nutrient-dense snack bars; and (ii) fruit-based meal replacement bars; nut-based snack bars; vegetable-based raw food bars; vegetable-based snack foods; nut-butters; powdered nut-butters; single serving nut-butters.

30. D's Naturals offers dairy free and soy free cereal bars under the trademark NO COW through its online retail store with the web address www.nocow.com.

31. D's Naturals offers dairy free and soy free cereal bars under the trademark NO COW through retailers such as Vitamin Shoppe, GNC, 24 hour fitness, Lifetime Fitness, HEB, Wegmans, CVS, and many other stores in Ohio and throughout the United States.

32. D's Naturals has begun offering protein cookies under the trademark NO COW through retailers such as Vitamin Shoppe, and through its own online retail service, in Ohio and throughout the United States. The cookies can currently be purchased via the internet at web addresses including: www.vitaminshoppe.com/p/no-cow-cookie-snickerdoodle-12-cookie-s/dsn1025; www.vitaminshoppe.com/p/no-cow-cookie-peanut-butter-12-cookie-s/dsn1024; and <https://nocow.com/cookies/>.

33. Within at least the last six months, goods using the NO COW mark have been traveling in interstate commerce with labels attached that state "Manufactured For: D's Naturals, LLC, Cincinnati, OH 45241 USA."

34. D's Naturals' use of the NO COW trademark in connection with the goods referenced in the identifications of goods for its various trademark applications has begun to cause actual confusion in the marketplace.

35. For example, D's Naturals has been attending some of the same trade shows that Oatly has attended, including the Natural Products Expo East, 2017, and has featured its NO COW materials within close proximity to Oatly's WOW NO COW! materials. Attached as **Exhibit C** are printouts from the layout of the Natural Products Expo East 2017, marked to show the locations of Oatly's WOW NO COW! signage and D's Naturals' NO COW booth.

36. As a result of the close proximity of Oatly's and D's Naturals' materials at the Natural Products Expo East, 2017, consumers began sending out messages on social media connecting Oatly's WOW NO COW! signage with D's Naturals' NO COW products. Attached as **Exhibit D** are copies of social media messages depicting Oatly's signage and a "NO COW" hashtag associated with D's Naturals' products.

37. Likewise, many additional consumers have sent messages on social media connecting Oatly's WOW NO COW! products with D's Naturals' NO COW products. Attached as **Exhibit E** are copies of social media messages depicting Oatly's products and a "NO COW" hashtag associated with D's Naturals' products.

38. D's Naturals intends to use the trademark NO COW in connection with all of the goods identified in USPTO trademark application Serial No. 87/470,210.

39. D's Naturals' non-dairy products are related to the goods offered by Oatly in connection with its WOW NO COW! trademark.

40. The health goods and fitness retailers where D's Naturals' goods are sold are similar to or within the natural area of expansion for Oatly's channels of trade.

41. D's Naturals was either aware of or constructively aware of Oatly's federal trademark registration for WOW NO COW! when D's Naturals began offering products under the NO COW trademark.

42. D's Naturals was aware of Oatly's use of WOW NO COW! in commerce within the United States when D's Naturals began offering products under the NO COW trademark.

43. D's Naturals intends to free ride on the goodwill associated with Oatly's WOW NO COW! trademark in order to confuse and deceive consumers in the marketplace into the mistaken belief that D's Naturals is associated with or connected to Oatly.

44. Oatly has not consented to D's Naturals' manufacture, sale, and/or distribution of products under NO COW, NO COW. NO BULL. NO WHEY!, or any other similarly confusing mark.

COUNT I
INFRINGEMENT OF REGISTERED TRADEMARK
(15 U.S.C. §§ 1114)

45. Oatly incorporates by reference the allegations contained in the preceding paragraphs as if fully restated herein.

46. Oatly owns all registered and common law rights in Oatly's Registration. Oatly's registration has priority over both the filing and use dates associated with D's Natural's U.S. Registration No. 4,839,835. Under 15 U.S.C. § 1115, Oatly's Registration is *prima facie* evidence of the validity of the mark and of Oatly's exclusive right to use the WOW NO COW! trademark in commerce.

47. As a result of Oatly's use, sales, advertising and promotional activities, and widespread distribution of such efforts throughout Ohio and the United States, Oatly's WOW

NO COW! trademark has become well known and accepted by the public and serves to distinguish Oatly's goods from those of others.

48. D's Naturals' use of NO COW in commerce in connection with the goods identified in D's Naturals' trademark applications, such as cereal bars, and other goods similar to Oatly's goods, is likely to cause confusion, cause mistake, or deceive as to the affiliation, connection, or association of D's Naturals with Oatly as to the origin, sponsorship, or approval of D's Naturals' goods or services and constitutes a willful violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

49. D's Naturals' acts, in particular the continued infringement of the WOW NO COW! trademark, have been committed with the deliberate intent to cause confusion, mistake and to deceive.

50. D's Naturals' conduct has caused, and will continue to cause Oatly to suffer severe, immediate and irreparable injury for which Oatly has no adequate remedy at law unless D's Naturals is enjoined pursuant to 15 U.S.C. § 1116.

51. As a result of D's Naturals' willful, deliberate, and malicious activities and conduct, Oatly has been harmed and will continue to be harmed. Accordingly, Oatly is entitled to recover its damages, D's Naturals' profits received as a result of its infringing activities and conduct, Oatly's attorney's fees, and the costs of this action pursuant to 15 U.S.C. § 1117(a).

52. Damages alone will not provide Oatly with an adequate remedy at law.

COUNT II
FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(a))

53. Oatly incorporates by reference the allegations contained in the preceding paragraphs as if fully restated herein.

54. Oatly has expended substantial resources, including time and money in building the WOW NO COW! trademark and all associated goods and services, and as a result, the public has come to associate the WOW NO COW! trademark with Oatly and use that mark to identify Oatly as the source of Oatly's products.

55. The continued use by D's Naturals of NO COW as set forth above constitutes unfair competition and violation of the federal Lanham Act, 15 U.S.C. § 1125(a), and violation of Oatly's exclusive rights to exploit the WOW NO COW! trademark.

56. The foregoing conduct of D's Naturals further constitutes a false designation of origin in violation of 15 U.S.C. § 1125(a).

57. As a direct and proximate result of D's Naturals conduct, Oatly has suffered damage to its valuable WOW NO COW! trademark, and other damages, in an amount that exceeds \$75,000.00.

58. D's Naturals has unjustly profited by its unlawful actions.

59. D's Naturals has committed the foregoing acts with notice of Oatly's rights and such actions were willful and intended to cause confusion, to cause mistake, or to deceive

60. Oatly has been and will continue to be damaged by D's Naturals' unlawful actions.

61. D's Naturals' conduct and acts, as alleged above, will continue to cause irreparable harm to Oatly unless enjoined by the Court.

62. Damages alone will not provide Oatly with an adequate remedy at law.

COUNT III
OHIO UNIFORM DECEPTIVE TRADE PRACTICES ACT

63. Oatly hereby incorporates by reference the preceding paragraphs as if fully restated herein.

64. D's Naturals has willfully violated the Ohio Uniform Deceptive Trade Practices Act, Ohio Revised Code §4165.02, by causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval, affiliation, connection or association with Oatly.

65. D's Naturals' acts of infringement have been committed with the intent to cause confusion and mistake and to deceive.

66. Oatly has been and will continue to be damaged by D's Naturals' unlawful actions.

67. D's Naturals' conduct and acts, as alleged above, will continue to cause irreparable harm to Oatly as to which it has no adequate remedy at law, unless enjoined by this Court.

COUNT IV
COMMON LAW TRADEMARK INFRINGEMENT

68. Oatly hereby incorporates by reference the preceding paragraphs as if fully restated herein.

69. D's Naturals' use of NO COW as described herein constitutes trademark infringement under the common law of the State of Ohio.

70. D's Naturals' acts of infringement are willful and have been committed with the intent to cause confusion and mistake and to deceive.

71. Oatly has been and will continue to be damaged by D's Naturals' infringement.

72. D's Naturals' conduct and acts, as alleged above, will continue to cause irreparable harm to Oatly as to which it has no adequate remedy at law, unless enjoined by this Court.

COUNT V
COMMON LAW UNFAIR COMPETITION

73. Oatly hereby incorporates by reference the preceding paragraphs as if fully restated herein.

74. The acts described above reflect D's Naturals' scheme by which it, without authority, consent or privilege, intended to imitate or pass off its goods as those of Oatly or as goods that have received the sponsorship or approval of Oatly. Such conduct constitutes unfair competition in violation of the common law of the State of Ohio.

75. Upon information and belief, D's Naturals' alleged acts of infringement are willful and have been committed with the intent to cause confusion and mistake and to deceive.

76. Oatly has been and will continue to be damaged by D's Naturals' unfair competition.

77. Naturals' conduct and acts, as alleged above, will continue to cause irreparable harm to Oatly as to which it has no adequate remedy at law, unless enjoined by this Court.

COUNT VI
CANCELLATION OF REGISTRATION DUE TO PRIORITY

78. Oatly hereby incorporates by reference the preceding paragraphs as if fully restated herein.

79. Oatly's Registration maintains a USPTO priority date of May 9, 2014.

80. D's Natural's alleged first date of use for U.S. Reg. No. 4,839,835 is July 1, 2014.

81. D's Naturals filing date for U.S. Reg. No. is October 31, 2014.

82. Oatly has priority of use in the use of the WOW NO COW! trademark based on its use since the registration date of September 20, 2016 and its filing priority date of May 9, 2014.

83. D's Naturals' NO COW mark is confusingly similar to Oatly's Registration in sight, sound, meaning and commercial impression.

84. Oatly's Registration features a strong, arbitrary or suggestive mark.

85. D's Naturals' goods claimed in U.S. Reg. No. 4,839,835 are identical to or closely related to the goods identified in Oatly's Registration, so as to cause consumer confusion.

86. D's Naturals' goods claimed in U.S. Reg. No. 4,839,835 travel in the same or similar trade channels as the goods identified in Oatly's Registration, or travel in trade channels that are within the natural zone of expansion of Oatly's Registration.

87. D's Naturals' goods claimed in U.S. Reg. No. 4,839,835 are marketed in the same or similar marketing channels as the goods identified in Oatly's Registration, or travel in marketing channels that are within the natural zone of expansion of Oatly's Registration

88. Actual confusion has occurred in the marketplace as between U.S. Reg. No. 4,839,835 and Oatly's Registration.

89. Consumers, in this case the general public shopping for health-food products and nutritional supplements, exercise little care in selecting among different brands offering such products.

90. D's Naturals' registered U.S. Reg. No. 4,839,835 for the purpose of creating confusion, mistake, or deception in regard to Oatly's Registration, and thus did so with bad intent.

91. Oatly will be damaged by the continued registration of U.S. Reg. No. 4,839,835.

PRAYER FOR RELIEF

WHEREFORE, Oatly respectfully demands judgment against D's Naturals as follows:

- (1) Restraining and enjoining D's Naturals, permanently and preliminarily during the pendency of this action, together with D's Naturals' officers, agents, members, employees, successors and assigns, and all those in privity and/or acting in concert with them, from advertising, selling, marketing, or distributing D's Naturals' goods and services, including but not limited to snack bars, cereal, nut, and oat-based products, drink supplements, cookies and beverages, under the "WOW NO COW! trademark, the NO COW trademark, the NO COW. NO BULL. NO WHEY! trademark, or any other confusingly similar names or marks, and/or otherwise using the WOW NO COW! trademark, NO COW trademark, or NO COW. NO BULL. NO WHEY! Trademark or any confusingly similar name or mark;
- (2) Awarding Oatly its monetary damages, including actual damages sustained as a result of D's Naturals' infringement of the WOW NO COW! trademark and other unlawful conduct set forth herein, together with an accounting of D's Naturals' profits, as provided in 15 U.S.C. § 1117, and Ohio common law, all in amounts to be determined at trial;
- (3) Awarding Oatly punitive damages against D's Naturals for its willful misconduct in an amount to be determined at trial;
- (4) Awarding Oatly its costs and reasonable attorneys' fees and expert witness fees in this action;
- (5) That D's Naturals be required to deliver up for destruction all advertising and promotional materials, all packaging materials, and all business documents, including labels, cartons, brochures, business stationary, calling cards, information sheets, posters, signs, and any other printed or graphic materials of any type, including the plates, molds or other means of

producing the materials, which bear reference to confusingly similar imitations of Oatly's WOW NO COW! trademark;

(6) That D's Naturals be required to expressly abandon any and all pending trademark applications that include the words "no cow," including but not limited to Application Serial Nos. 87/470,210, 87/648,771, 87/648,816, and 87/648,844;

(7) That D's Naturals be required to remove all content from and shut down its use of the website and domain name located at www.nocow.com and all related social media accounts.

(8) Cancelling U.S. Trademark Registration No. 4,839,835;

(9) Finding the case to be exceptional under 15. U.S.C. § 1117(a); and

(10) Granting Oatly such other and further relief as the Court may deem just and equitable.

Dated: December 15, 2017

Respectfully submitted,

/s/ Karen Kreider Gaunt _____

Karen Kreider Gaunt

Michael J. Wheeler

DINSMORE & SHOHL LLP

255 East Fifth Street

Cincinnati, OH 45202

(513) 977-8503 phone / (513) 977-8141 fax

Karen.Gaunt@dinsmore.com

Michael.Wheeler@dinsmore.com

Attorneys for Plaintiffs, Oatly AB and Oatly, Inc.